

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 24, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Ann Bleed, Steve Duvall, Barbara Hopkins, Greg Schwinn, Cecil Steward, Rick Wallace and Joe Wilson (Gerry Krieser absent); John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order.

The Clerk announced that the following applications have been withdrawn and are no longer on the agenda:

- 3.2a Amendment No. 94-30-1b, pursuant to the 1999 Comprehensive Plan Annual Review, for Urban Residential designation at 84<sup>th</sup> & South Streets.
- 3.2b Change of Zone No. 3149, from AG to R-2 at So. 84<sup>th</sup> & Norval Road.
- 3.2c Special Permit No. 1744, Lindenwood Park Community Unit Plan, generally located at So. 84<sup>th</sup> Street and Norval Road.
- 3.2d Preliminary Plat No. 98026, Lindenwood Park, generally located at So. 84<sup>th</sup> Street and Norval Road.
- 4.3 Amendment No. 94-30-1a, pursuant to the 1999 Comprehensive Plan Annual Review, for commercial designation at the northeast corner of 84<sup>th</sup> & Van Dorn.
- 4.4 Amendment No. 94-30-19, pursuant to the 1999 Comprehensive Plan Annual Review, for commercial designation at 24<sup>th</sup> Street and Dodge, one block south of Superior Street.

Hopkins requested a motion approving the minutes for the meeting held March 10, 1999.

Motion to approve made by Wallace, seconded by Schwinn and carried 7-0: Bayer, Duvall, Hopkins, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed abstaining; Krieser absent.

**CONSENT AGENDA**

**PUBLIC HEARING & ADMINISTRATIVE ACTION  
BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Bayer, Bleed, Duvall, Hopkins, Schwinn, Steward, Wallace and Wilson; Krieser absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1764; SPECIAL PERMIT NO. 1765; SPECIAL PERMIT NO. 1733A, MUFF 1<sup>ST</sup> COMMUNITY UNIT PLAN; PRELIMINARY PLAT NO. 99001, MUFF 1<sup>ST</sup> ADDITION; AND FINAL PLAT NO. 99007, FROEHLICH INDUSTRIAL PARK 1<sup>ST</sup> ADDITION.**

**Item No. 1.2, Special Permit No. 1765** was removed from the consent agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Bleed and carried 8-0: Bayer, Bleed, Duvall, Hopkins, Schwinn, Steward, Wallace and Wilson voting 'yes'; Krieser absent.

This is final action on **Special Permit No. 1764 and Final Plat No. 99007, Froehlich Industrial Park 1<sup>st</sup> Addition**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1765  
FOR AN EARLY CHILDHOOD CARE FACILITY  
AT 2430 N.W. 8<sup>TH</sup> STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing.

Steve Henrichsen of the Planning staff distributed two anonymous letters in opposition. Chair Hopkins believes that the Planning Commission normally disregards anonymous letters. Mr. Henrichsen agreed, stating that in general, the staff recommends that people

appear at the hearing or send a letter with their address and signature.

Proponents

**1. Mike Hullett**(sp), appeared on behalf of the applicant. He is the applicant's son-in-law and has been helping her with the planning of this day care center. Ms. Tomlin has been doing day care for 16 years; she currently has approval for 12 children and wishes to expand to 30. She will also be expanding her staff and will upgrade the home to accommodate the change and meet any regulatory requirements. She has received endorsements from West Lincoln Elementary School, which is two blocks away; and written endorsements from other people in the area. The property is one block north of Cornhusker Highway so it will not bring a lot of traffic into the residential area.

Bleed inquired whether there would be 30 children at the center at the same time, or is there before and after school care? Mr. Hullett advised that the age range is 6 months to 13 years. Some will be before and after school care and would not be there all day. There may be some evening care provided as well.

**2. John Hoppe, Jr.**, the owner of properties on both sides of the subject property, testified in support. Ms. Tomlin has been a good neighbor; she keeps the premises clean; it has been well organized and he believes this will help the area.

There was no testimony in opposition.

Hopkins referred to an old chart from the Health Department showing a need in zip code 68521 for 1,674. Mr. Henrichsen advised that the Health Department did not send a new chart for this application but their comments are that there is certainly a need for this type of care in this area.

Hopkins asked that Health be encouraged to submit the chart for each application for child care.

Mr. Henrichsen also referred to the letter from the principal of West Lincoln Elementary in support of the need.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Bayer moved approval of the Planning staff recommendation of conditional approval,

seconded by Duvall.

Bayer believes this is an ideal place for child care. We have indicated that two or three blocks away from a school is a wonderful location and there is a need.

Motion for conditional approval carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99002**  
**(BASE MANAGEMENT DISTRICT)**  
**and**  
**COMPREHENSIVE PLAN CONFORMANCE NO. 99003**  
**(OVERLAY MANAGEMENT DISTRICT)**  
**TO CREATE A NEW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT**  
**ON PROPERTY GENERALLY LOCATED IN DOWNTOWN LINCOLN**  
**BETWEEN 6<sup>TH</sup> AND 17<sup>TH</sup> STREETS FROM H TO R STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

A staff opinion from the Nebraska Accountability and Disclosure Commission indicates that Russ Bayer, Joe Wilson and Cecil Steward do not have a conflict of interest on this legislation and that they may participate and vote on the matter as they see fit.

**1. Joan Modrell, Director of the City Urban Development Department,** presented the application. Urban Development is the designated city department that does all the preparation work, annual assessments, technical and mechanic things associated with a business improvement district (BID) once the City Council passes that legislation. The purpose of these applications is to review the intent to create two Downtown Management Business Districts as to conformity with the Comprehensive Plan. The City Council legislatively would establish these two new management BID's. The property owners and the Downtown Lincoln Association have been examining the current management BID which was established in 1989, and explored options on how to improve the BID legislation to better serve the needs and desires of the property owners. The key points to remember are that the boundaries are changed somewhat; there are not a lot of physical improvements proposed; and the old core and perimeter concept would be replaced with one management BID with a core overlay district. It is a little different as far as reference but is indeed the establishment of two BID's in this geographical area. These BID's are a very valuable and successful tool in keeping the Downtown competitive.

**2. Polly McMullen, Executive Director of the Downtown Lincoln Association,** testified

in support of these applications. These districts were first created by the City in 1989. She read excerpts from the 1989 resolution designating the purpose of the creation of the BID, i.e., develop public activities and promotion of public events, including management and promotion and advocacy of retail trade activities or other promotional activities in the district; enhance enforcement of parking regulations; improve parking availability; physical improvements for decoration and security purposes; etc. These districts are before the Commission for renewal in order to reflect changes in the Downtown which have occurred over the last 10 years. The Downtown Lincoln Association fully supports this request and recommends a finding of conformance with the Comprehensive Plan.

There was no testimony in opposition.

Public hearing was closed.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99002**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Bleed moved to find the proposal to be in conformance with the Comprehensive Plan, seconded by Bayer.

Bleed noted that this is an exciting concept that has worked well in the past.

Bayer stated that he has been involved both as a property owner and as a member of the committee. The DLA has done everything they possibly can to get the downtown business owners and tenants involved in this process. There have been meetings held since last summer and there has truly been an effort to get neighbors, residents and tenants involved.

Motion carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 99003**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Wallace moved to find the proposal to be in conformance with the Comprehensive Plan, seconded by Steward and carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

**SPECIAL PERMIT NO. 1610B**  
**TO ADD THREE ELDERLY HOUSING UNITS**  
**TO AN EXISTING DOMICILIARY CARE FACILITY**  
**ON PROPERTY LOCATED AT**  
**NO. 56<sup>TH</sup> AND FREMONT STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Planning staff recommendation: Conditional approval.

Proponents

**1. Gary Bredehoft of Olsson Associates**, testified on behalf of the applicant. This is a proposal to amend the special permit to add three elderly housing units along Fremont Street--one single family and one duplex--to the existing domiciliary care facility. The applicant agrees with the conditions of approval, with the exception of #2.1.1.4. This condition requires that the fence be removed from the front yard setback along Fremont Street. Mr. Bredehoft explained that the single family unit and duplex unit will be in front of the domiciliary care facility. The front fence is meant to tie it all together. It will be wrought iron and brick. They do not want to remove the fence.

Bayer asked if the picture presented is what the fence and the buildings will actually look like. Mr. Bredehoft assured that it will be a wrought iron fence and the applicant would agree to a condition as such.

Bleed asked where the fence is located in relation to the front yard setback. **Bob Schoenleber**, the architect, advised that the fence is intended to stay in the location as shown on the plan, which is at the front property line. They have taken special care to stay out of the sight distance triangle. They are trying to create an entrance on Fremont Street to attract a little visual interest to the facility. At 6' in height, Mr. Schoenleber does not believe the fence is intrusive.

Steward asked whether the fence is freestanding, i.e. it starts and stops at the corner. Mr. Schoenleber explained that the fence turns the corner and goes back to the front yard setback on both sides. Steward noted that the illustration depicts that the wrought iron is only in the freestanding panels – the rest would be solid brick. Mr. Schoenleber responded, stating that the actual drawing shows a third fence so that it is even more open than shown on the drawing. The brick is just to wrap the corners. Steward believes the openness or closed is the objection by staff.

There was no testimony in opposition.

Wilson asked staff to respond. Jennifer Dam of Planning staff advised that the site plan submitted with the application showed the fence to be a 6' stockade fence. A plan as shown in the illustration today was not submitted with the application. Her idea of a 6' stockade fence was wooden and she did not believe this would be beneficial. She suggested that the wording be specific as to the wrought iron fence. Ms.

Dam added that another concern with the fence in general, is that it sets the elderly housing apart from the rest of the neighborhood, which is single family dwellings on both

sides on Fremont Street. Without the fence, it might blend a little more with the existing neighborhood.

Wallace asked if the staff would be opposed to a straight wrought iron fence. Ms. Dam stated that the staff would agree to the wrought iron fence all the way across without the brick; however, the staff would not be opposed to “some” brick.

Ray Hill of Planning staff reminded the Commission that at the time they reviewed a project at 70<sup>th</sup> & Pioneers, the developer promised and presented a rendering and that rendering was worked into the resolution indicating that the fence would be substantially similar to what was presented at the hearing. At the time it is built it can be compared to the illustration.

Rick Peo of the City Law Department approached the Commission and advised that the condition should be amended “..to show a brick and/or wrought iron fence in the front yard setback along Fremont Street as designated in the applicant’s testimony.” Steward would not be satisfied with brick and/or wrought iron. He would be more inclined to vote in favor if it were phrased such that it were a fence of predominantly wrought iron in nature. Mr. Peo concurred that to be appropriate. The language needs to be specific as to the type of fence the Commission is looking to have constructed.

#### Response by the Applicant

Mr. Bredehoft is not sure his client would accept the “predominantly wrought iron” condition. They would like to have some brick in order to be similar to what they have built. He does not want it conceived to be all wrought iron.

Wallace wondered about stipulating to a fence height.

Steward believes the concern here is that we not set precedence for the appearance of “gated communities”. And it seems to him that anytime we are engaged in solid fencing on a public thoroughfare, with an automobile entrance, that we are in that territory. Therefore, it is the openness that is the question to him--not how it is designed, and whether there is more brick at the base or wherever. Mr. Schoenleber stated that the intent was to establish a sense of security and also to establish a little separation from the neighbors, but not total isolation, because there is a major complex in the back. They want to be open to their neighbors but they also want to establish a sense of permanence with a theme running through the whole project in an attempt to tie it all together. Brick is more a type of permanence than a “keep you out” type gate.

Duvall pointed out that the staff did not know that this was the type of fence that was being proposed. Mr. Schoenleber agreed that to be a misrepresentation on the part of the applicant, but not on purpose. It was never to be a 6’ stockade fence.

Bayer does not believe that four panels of brick would be predominantly wrought iron. Mr. Schoenleber stated that he would agree to submit the plan for review, but this type of fence is something the developer's clients are wanting to provide for the permanence.

Jerry Joyce, the developer of the project, clarified that the intent is to keep a real open look because they want to attract people to the big building behind, so the panels with the wrought iron are set back two feet and it is a very open feel. It is not a gated or security type look. The materials in the brick, fence and stone are already incorporated into the building and he believes it is aesthetically and architecturally important to the project.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Schwinn moved approval of the Planning staff recommendation of conditional approval, seconded by Bleed.

Schwinn moved to amend to delete Condition #2.1.1.4, seconded by Wilson.

Schwinn commented that personally, if they want to build a gated community, that's fine with him.

Wilson has seen this developer's work in The Legacy on 56<sup>th</sup> & Pioneers and it is outstanding. If they think they need the mostly brick fence, he has no problem with it.

Steward has also seen this developer's work and agrees that it is exceptional. This is hairsplitting perhaps, but just as a matter of principle he believes we need to be very careful when we are separating development from the remainder of the neighborhood in such a strong visual way. This is his objection—you can demarcate the property and bring the focal point to an inward piece of property in a manner without having a solid 6' wall at the corners, which all suggests visually that there are people who should be inside and those who should be outside. If it is a community development, then let's present it in such a way that it is open and inviting. He really would object to the 6' brick fence.

Motion to amend to delete #2.1.1.4 failed 4-4: Schwinn, Duvall, Bayer and Wilson voting 'yes'; Wallace, Bleed, Steward and Hopkins voting 'no'; Krieser absent.

Steward moved to amend Condition #2.1.1.4 to "show the fence in the front yard setback with its design to be reviewed with Planning staff prior to approval, seconded by Bleed.

Rick Peo advised that this puts a wrong connotation on the review. There is no standard to follow. He suggested a more appropriate condition.

Motion withdrawn.



Steward moved to amend Condition #2.1.1.4 to “show the fence in the front yard setback designed with predominantly an open appearance, seconded by Bayer. Ms. Dam suggested that if the intent is to have it be predominantly wrought iron or as shown in the handout, that is the way it should be written. Mr. Peo suggested that the term “predominantly” would require that more than 50% be wrought iron. It would be nice to have a standard rather than that term, such as “more than 50% wrought iron”.

Steward withdrew the motion.

Bayer moved to amend Condition #2.1.1.4 to “show a fence at least 50% wrought iron, similar to the one illustrated in the testimony by the applicant.”, seconded by Wilson. Motion carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting ‘yes’; Krieser absent.

Main motion, as amended, carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting ‘yes’; Krieser absent.

**SPECIAL PERMIT NO. 1763**  
**FOR SOIL EXCAVATION**  
**ON PROPERTY GENERALLY LOCATED**  
**AT THE NORTHWEST CORNER OF**  
**NO. 70<sup>TH</sup> STREET AND ARBOR ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Planning staff recommendation: Conditional approval.

Proponents

**1. Jack Tuma of ESP** appeared on behalf of the owners, **Jack and Marie Herbert**. This request is brought forward because Arbor Road has now been brought to an improved grade by Lancaster County and possibly will be paved yet this year, if not next. Because of some grade differences, the owners have decided to bring part of their property to a grade that more closely parallels the existing pavement grade. A large part of this tract does lie below the grade and would not be suitable for development unless the grade is raised. Most of the dirt will be used to bring the site to grade. If there is excess material, the owner probably will sell it upon demand and that is the reason for the permit.

Mr. Tuma had no problem with any of the conditions of approval. He has had two phone

calls about the project, one of which was from the County Health Department asking for clarification of the remedies or methods of dust control, which the applicant has agreed to do. They do need to work some issues out with Public Works, and he believes they can reach agreement.

Steward was curious about the impact of the excavation. There will be up to 30' of regraded berm, especially at the east end of the property—is that a residential piece? Mr. Tuma acknowledged that there is an existing house on that particular lot and it is not owned by the applicant. Mr. Herbert has, however, attempted to purchase it and may do so sometime in the future. He would like to acquire this property. Steward asked Mr. Tuma to confirm that there is no consequential impact on that property by this special permit. Mr. Tuma confirmed, stating “not really, no”. That residential property’s access is to 70<sup>th</sup> Street to the east. The grade differential in some cases is precipitated by what has happened with the access over the interstate.

Steward referred then to vegetation and drainage. It appears that all of the vegetation is being taken out from the middle of the property--the low part--which was a natural drainage area, and the side slopes are being steepened. Mr. Tuma advised that today there are no sideslopes. The entire area is basically flat. Steward asked Mr. Tuma whether he has calculated flow into the restriction under the road. Mr. Tuma responded that the County has sized that. It is a new structure. Steward wondered whether they sized it on the basis of natural terrain or on this grading plan. Mr. Tuma believes it was sized on the natural terrain. The speed will be a difference, but very little. He does not believe it will be affected that much.

### Opposition

**1. Teresa and Tom Tambke**, 6001 Arbor Road, testified in opposition. This is the third special permit in the last four years of this type on Arbor Road. The first one was in this same place. It lasted about a year and it was a total disaster. There was dump truck traffic past their house constantly. The permittee did not follow the rules and regulations within the permit. They did not attempt to renew that special permit because of the unhappiness of the neighbors.

The second permit was the same as the first—they did not comply with the conditions. They were to run only during specific hours; not go in front of the house; no Sundays and no holidays, but none of these conditions were complied with. They were denied renewal. Mr. & Mrs. Tambke are opposed to this special permit, partially due to the added traffic from the antique mall, Lincoln station and a freight company across the street, plus construction on 70<sup>th</sup>, Aliant on 70<sup>th</sup>, Cathers on 70<sup>th</sup>. Arbor Road is still a country road, even though it has been improved. Everything in her yard has been ruined; everything in the house has been ruined by the dust; they put a privacy fence 80' in front of the house to protect them from the traffic and dust; they had to fence in the back yard to protect their animals. Last time there were 5-15 different contractors hauling. There is no way to

enforce the conditions.

Mr. & Mrs. Tambke have lived at this location since February 7, 1979. Steward asked Ms. Tambke whether she was aware that in 1994 this area was designated as industrial in the Comprehensive Plan. Ms. Tambke has been told that, but they are the only house from the corner of Hwy 77 until you get to 70<sup>th</sup>--one mile--and they do not have the means to put up a big fight. They have been told over and over that the developers are going to work with them, but it doesn't materialize. What does one person do but keep trying? She has worked hard to keep her property improved only for the people that don't live out there to fill their pockets and have no concern for the people that live there. She does not believe their property is worth anything commercially or residentially. Five years ago their property was worth \$150,000 to \$175,000, and she does not believe it is worth that today.

Bayer suggested that the Tambke's need to call Building & Safety when the permittee does not comply with the conditions. Ms. Tambke stated that she did work with Building & Safety, but they do not have the manpower to enforce it.

Wallace asked whether the Tambke's filed an official complaint or was it just dialog and documentation with Building & Safety? Ms. Tambke stated that she just called. She did not know she had to file a formal complaint.

The Tambke's are concerned about their quality of life, their children's quality of life, and their animals' quality of life. They put new landscaping in the yard but it may not survive because it is covered with dust, etc. She realizes this application is for a different permittee, but she also knows what it is like to be in construction and having to haul the dirt when it is needed and when the weather is cooperating.

Bayer suggested that the Tambke's opposition is more about the especial permit process as opposed to this particular application. What meat is there in a special permit? Why do we have conditions at all if we can't enforce them? Mike DeKalb of Planning staff advised that on a special permit there are conditions in the hope that there is an honorable relationship between the parties involved and an agreement to follow the rules; if the conditions are not met and as complaints are made, Building & Safety is the enforcement agency. Building & Safety and the County Engineer have made a variety of inspections. The procedure is to talk to the holder of the permit and try to work out agreements. If they resolve the violations and reach an agreement, the permittee is allowed to continue. If it is not resolved, Building & Safety can go to the County Attorney and revoke the special permit.

Mr. DeKalb advised that on the land to the west, there have been three renewals annually to provide for annual inspection and review. Last time the original version had been approved and it was appealed to the City Council, and conditions were put in at that time that satisfied all parties involved. Mr. DeKalb knows that both Larry Worrell and Dale Stertz have been on the site more than once. Yes, they were in violation of the special

permit but it was not turned over to the County Attorney.

Mr. DeKalb suggested that the Commissioners invite Building & Safety and the Law Department to a lunch meeting to discuss the procedures for enforcement.

Wallace wondered whether a bond could be required. Rick Peo of the City Attorney's office advised that there are two enforcement mechanisms. Violation of zoning code is a misdemeanor and imposes a fine; when advised of the violation, the building official is supposed to report it to the City Council, which, after public hearing with the applicant or permittee, can revoke a special permit or impose additional conditions. He suggested that in this type of situation, the complaining party should contact the City Attorney and if there are legitimate violations, the City Attorney would recommend that Building & Safety report it to the City Council and take appropriate action regarding the special permit. The City Attorney's office was never notified of any violations on this permit. Building & Safety is the responsible enforcing agency, but their duty is to report violations and take them forward to the City Council.

Schwinn noted that this permit is mainly to move dirt on the site. This really is not to haul dirt off. Mr. DeKalb concurred that the bulk of the dirt is to be handled on site, but since they will be doing some mining, they may be doing some sales to off-site locations. Schwinn suggested that the applicant should know how much dirt is going to be removed. Mr. Tuma did not have that information today, but he could provide it.

Mr. DeKalb confirmed that the conditions of approval are tied to the site plan. The hours of operation, for example, are stated on the plan and are binding and incorporated into the permit.

Steward inquired about drainage and whether the silt fencing is adequate. Steward is concerned for increasing the velocity of flow through this mid-property channel and whether anyone has calculated that culvert condition and the lower property. What impact on the downstream property will this grading have? Dennis Bartels of Public Works did not raise the question about volume or velocity; however, he had raised a question concerning the silt fence—this is basically a final grading plan and they requested some sort of phasing with the idea that the erosion control plan needed to be adjusted as the various phases went along. His concern is that the vegetation gets restored or it is returned to farming. He is concerned about runoff from this site into the drainage ditch. He does not know what the total drainage area is. His major concern was controlling sediment and erosion into the ditch that might be carried off-site. He is asking for a means to control sediment and erosion to this ditch.

Mr. DeKalb also pointed out that the County Engineer did review the plans and had suggestions but did not bring up anything relative to runoff or sizing of the culvert that they

had just installed.

Hopkins asked about compensation for damages. Mr. Bartels believes it would be a civil case between the two property owners. He knows of no way the city would be involved in recovering damages. Hopkins asked who should be called if Building & Safety does not do anything once they are informed. Hopkins believes the city has some responsibility when there is a special permit. If the city does not refer it on, what are their options? Rick Peo, City Attorney, advised that the complainant could call the Mayor's office or the City Attorney's office. The City Attorney would ask Building & Safety to report on the violations and if they are not petty type things, the City Attorney would tell Building & Safety to take it to the City Council for review and hearing. Hopkins wants to know that there are some "teeth" behind these permits. Mr. Peo believes there are potential "teeth" and the permit can be revoked for violations.

#### Response by the Applicant

Mr. Tuma sympathizes with the people that have been here before if nothing can be done. Mr. Tuma believes the proposal being presented today is in good faith, but when construction starts, it does involve other people. He does not believe the owner can be held responsible. He would like to see some manner that a cease and desist order can be rendered until violations are corrected. The prior permit holder on this property was the contractor, not the owner of the property. At the time that the permit came up for renewal, the permittee asked the city not to renew the permit because he was not satisfied with the work being done on his property, nor was he very content with the number of complaints that he was hearing. Mr. Tuma cannot guarantee that anything is going to be different, but in this case the permit is held by the owner of the property—not another individual.

Schwinn asked why there is no application for a change of zone. Mr. Tuma is sure that the owner will make that request sometime in the future. Schwinn is curious about this type of speculative earth moving. In addition, on the drainage, there is no plan for future retention, etc. Mr. Tuma pointed out that at the moment, as stipulated by the general notes, the area that can be served at any one time is 10 acres in size. When that area is completed, it is to be reseeded or returned to farming operations, and the area will be farmed until the owner elects to proceed with subdivision of the property. He is positive the owner will ask for some type of commercial zoning.

Wallace inquired about the documentation submitted by Ms. Tambke with regard to violations on the adjacent property. Personally, he has had to compensate some property owners for damages, and he believes that is fair. Maybe that is something that needs to be considered. He would not deny that trees may be covered with dust, but, hopefully, this owner, this permit holder, can do better.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Bleed moved to deny, seconded by Steward.

Bleed appreciates Mr. Tuma's honesty. She wishes that in the past the city had done a better job of following up on the complaints. If we had been able to follow up on the complaints or if the former excavator had done a better job of staying within the guidelines, we would not have the problem facing us today. She is concerned that Mr. Tuma is coming into this as a new applicant and it is not his fault that the previous permittee did not follow the rules; however, the property owners have lived with this kind of excavation near their home for quite a long time. We have had temporary permits so that we would not have problems continuing year after year, but apparently we've had problems on this site. If this is going to be regrading for a new zoning, that might be appropriate but maybe it should be at the time the property is rezoned.

In the meantime, it is AG property and she does not see why it needs to be regraded for agriculture at this point in time. She will vote against the permit because the neighbors have had to suffer for many, many years with the site being poorly run.

Steward's comments were that aside from the local circumstance, this is not the first time in a land use designation on the Comprehensive Plan where we have seen sites reconfigured before a zoning request has been made because it strengthens the case for the request at the time that it is convenient for that request to be made. The property is agricultural. He has concerns about replacing the agricultural topsoil and productivity and water holding character to make that a viable situation. If the purpose is to create flat agricultural land, this is not the way to do it. This is obviously to develop a buildable site in a terrain that is otherwise not attractive. While within the owner's rights to make this request, he is concerned about continuing to decimate the I-80 corridor or allow it to be decimated with industrial sites on both sides from Seward to Omaha. The applicant is acting in good faith but the planning issue should not allow this to continue.

Hopkins commented that she believes the owner is still responsible even if he is subcontracting. An owner has a certain obligation and responsibility while other people are doing work.

Motion to deny carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

This is final action by the Planning Commission, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**ANNEXATION NO. 99003**

**TO ANNEX PROPERTY GENERALLY  
LOCATED ALONG SO. 84<sup>TH</sup> STREET,  
FROM OLD CHENEY ROAD TO PIONEERS BLVD.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Planning staff recommendation: Approval.

There was no testimony in support or in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 24, 1999

Duvall moved approval, seconded by Bayer and carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

**CHANGE OF ZONE NO. 3164**

**TEXT AMENDMENT TO THE ZONING ORDINANCE  
REGARDING TEMPORARY PAVING PLANTS.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins; Krieser absent.

Ray Hill of Planning staff advised that Mark Hunzeker, the attorney for the applicant, and the applicant have met with City and County staff, and that they are still meeting to work on the language. Mr. Hill requested an additional two-week deferral.

Bleed moved to defer with continued public hearing and administrative action scheduled for April 7, 1999, seconded by Bayer and carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

There was no testimony in support or in opposition.

**AMENDMENT NO. 94-30-11, PURSUANT TO THE  
1999 COMPREHENSIVE PLAN ANNUAL REVIEW  
TO INCREASE THE NUMBER OF LANES AND  
RIGHT-OF-WAY WIDTH OF EAST "O" STREET  
BETWEEN 52<sup>ND</sup> STREET AND WEDGEWOOD DRIVE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 24, 1999

Members present: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson, and Hopkins; Krieser absent.

Steve Henrichsen of Planning staff requested an additional two-week deferral with continued public hearing on April 7, 1999. On March 22<sup>nd</sup>, the City Council made their recommendation and staff would like two weeks to prepare a memo outlining Council action and a revised staff recommendation.

Bleed so moved, seconded by Wallace and carried 8-0: Schwinn, Wallace, Bleed, Duvall, Bayer, Steward, Wilson and Hopkins voting 'yes'; Krieser absent.

There being no further business, the meeting was adjourned at 2:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 7, 1999.